

**Pine Shores, Inc., Meadow Creek, Inc., and Cedar Ridge, Inc. and Health Care Workers of the United Brotherhood of Carpenters & Joiners of America.** Case 18-RC-15833

August 27, 1996

DECISION AND DIRECTION

BY MEMBERS BROWNING, COHEN, AND FOX

The National Labor Relations Board, by a three-member panel, has considered objections to and determinative challenges in an election held September 19, 1995, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 30 votes for and 25 against the Petitioner, with 11 challenged ballots, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief and has adopted the hearing officer's findings and recommendations,<sup>1</sup> as modified below.

The hearing officer recommended that Employer Objections 4, 5, 7, and 8 be sustained. The hearing officer found merit in the Employer's allegations that this third-party misconduct made a free and fair election impossible. There are no exceptions filed by the Union.<sup>2</sup>

Further, the hearing officer, though overruling the challenges to nine ballots, nonetheless recommended

<sup>1</sup> In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the challenges to the ballots of Carl Cadle, Patti Nybeck, Sandra Phillips, Ann Lechelt, Adam Garcia, Connie Bingel-Bombenger, Nancy Michaud, Jeff Hoyt, and Taylor Beaudoin and to sustain the challenge to the ballot of Nancy Smith.

Also, in the absence of exceptions, we adopt pro forma the hearing officer's recommendation to sustain Employer Objections 4, 5, 7, and 8 and to overrule Employer Objections 1-3, 9-11, and 13-16.

<sup>2</sup> The Employer excepts to the hearing officer's failure to find that the Union was responsible for the conduct. We agree with the hearing officer that the evidence does not establish union responsibility.

that those determinative ballots not be opened and counted. Rather, the hearing officer concluded that, regardless of the outcome of the election, a second election should be directed. The Employer excepts, arguing that the overruled challenges should be counted and that a second election should be directed only if the Petitioner prevails in a revised tally. We agree with the Employer.

Like the hearing officer, we are unable to determine who was responsible for the serious and substantial misconduct that occurred in this case. However, it is clear that the acts complained of were all directed at employees who opposed the Petitioner. In these circumstances, to direct a second election, regardless of the outcome of the election tally, would in effect benefit the wrongdoers who directed misconduct at antiunion employees. *Willis Shaw Frozen Express, Inc.*, 209 NLRB 267, 268-269 (1974). Accordingly, consistent with Board precedent, we shall direct that the challenged ballots be opened and counted. Id. If the Petitioner prevails in the revised tally, the Regional Director shall conduct a second election.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 18 shall, within 14 days of this Decision and Direction, open and count the ballots of Carl Cadle, Patti Nybeck, Sandra Phillips, Ann Lechelt, Adam Garcia, Connie Bingel-Bombenger, Nancy Michaud, Jeff Hoyt, and Taylor Beaudoin and thereafter prepare and cause to be served on the parties a revised tally of ballots. In the event that the revised tally of ballots shows that the Petitioner has not received a majority of the ballots cast, the Employer's objections will be moot and the Regional Director shall issue a certification of results.

However, in the event that the revised tally of ballots shows that the Petitioner has received a majority of the valid ballots cast, the following shall be applicable:

IT IS DIRECTED that the election conducted on September 29, 1995, be set aside.